

To: Chairman Robert Boyce, and
Members Senate Internal Affairs Committee Chairperson
Chairman Michael D. Whalley, and
House Election Law Committee Chairperson

From: Bud Fitch, Deputy Attorney General

Re: Report by the Attorney General's Office on Allegations of Voting Fraud at the
November 2004 General Election

Date: April 6, 2006

Recent debates on legislation relating to voting have brought to our attention that it may be helpful for this Office to issue a written report on the results of our investigations of voting fraud during the 2004 general election and the character of the work this Office does on elections.

The Attorney General's Office is responsible for enforcing the election laws. RSA 7:6-C; RSA 664:18; RSA 666:8. The Attorney General's Office made a major effort, working with the Secretary of State, leading up to and on general election day on November 2, 2004. Attorneys and investigators from the Attorney General's Office and specially trained Deputy Sheriffs were either positioned at polling places or were traveling around the State checking polling places and responding when complaints were received. Attorneys were assigned in advance and spent most of election day at four polling places which historically generated the highest volume of complaints or concerns. Attorneys staffed the Attorney General's toll free election line. Approximately 170 calls were received on the election line primarily from voters and approximately 40 additional calls were received from local officials, campaigns, advocacy groups, and the political party operations.

Subsequent to the election, the election attorney and the Secretary of State met with several groups of concerned citizens who believed that fraud may have occurred on election day. These citizens concerns focused on people either voting in New Hampshire who actually are domiciled in other states or on people voting more than one time. This Office received additional information on suspected fraud during a legislative hearing held by the House Election Law Committee where several citizens testified to their belief that there was widespread voting fraud occurring, particularly in the Keene and Dover area. On each occasion, this Office requested that any evidence of wrongful voting be submitted to the Attorney General's Office immediately so that an investigation could be conducted. The Chairman and members of the Election Law Committee encouraged those testifying about suspected fraud to provide any evidence of fraud to the Attorney General's Office. Only a very few of those raising concerns provided the Attorney General's Office with any information about their concerns.

Keene – Unfounded Allegations Of People Voting Twice

Based on testimony before the Election Law Committee that individuals were listed multiple times on checklists for the City of Keene, an investigation was conducted. It was established that while seven people with identical names, but different dates of birth and different addresses, had registered and voted in Keene on November 2, 2004, only one person was found to have his name listed on the checklist as having voted in two different wards in Keene. Based on interviews of the election officials and the voter it was determined that:

- This individual reported to ward 4 to vote and was sent home to get identification when he was unable to prove his identity.
- The individual is a local person who graduated from Keene High School, but is not a student at the college.
- The individual had been licensed to drive in New Hampshire, but did not have his driver's license available for identification because of court action.
- The individual returned to ward 4 with identification, registered and got almost all the way through the process when an election official determined that he was at the wrong polling place. Based on his residence, he was required to vote in ward 5. The voter registration form was voided, but his name was inadvertently not voided on the checklist. The individual was not allowed to vote in ward 4.
- The individual went to ward 5 and lawfully registered and voted.

The evidence from this case documents that, at least in this instance, people who could not prove their identity were not being allowed to register to vote. New Hampshire law currently requires a person to prove his or her identity in order to register to vote. Election officials report that they were very careful to ensure that people living outside the ward were not being allowed to vote in that ward. Based on Keene's volume of election day registrations (2,609) and voters processed through its polling places (12,595) we concluded that the inadvertent failure to cross this person's name off the ward 4 checklist, while unfortunate, was understandable human error. This thorough investigation yielded no evidence of wrongful voting.

Keene/Rindge – Returned Mail – One False Address

Starting in January of 2005, concerned citizens in the Keene and Rindge area mailed approximately 875 post cards to the street addresses of individuals who were recorded on checklists in Keene and Rindge as having registered and voted on November 2, 2005. Of those, 32 were returned by the United States Post Office as undeliverable. This evidence that these 32 individuals may not live at the address they reported as their domiciles was provided to the Attorney General's Office in June of 2005.

No evidence of voting twice was found. Motor vehicle records, voting records, and address records were used to identify the communities, both within and outside New Hampshire, where these people had previously lived. The election officials for each community were contacted, and it was verified that each individual had not voted in any of these towns or wards. The evidence indicates that these individuals voted only in the Keene ward or in Rindge where they registered on election day.

An arrest warrant is currently outstanding for one of those 32 people, for registering using an address that the State believes we can prove was not his valid address. While we have been unable to locate this individual who is reportedly living at an unknown location out west, a family member reports he was living in Keene around the time of the November 2, 2004 election. We have sought and have found no evidence that this individual voted more than once and it remains possible that he lived at a different address within the ward and voted legally in the Keene ward. As soon as this individual returns to the State, is located, and arrested we intend to prosecute him for providing a false address.

The remaining individuals were found to be lawful voters. Interviews with landlords, the voters, documentary evidence such as leases and utility bills, motor vehicle records, and other evidence was used to establish that each individual was lawfully domiciled in the town or ward where he or she voted or in the case of the overseas citizen voter was otherwise entitled to vote where he did vote.

One individual voted as an overseas citizen voter, voting only for federal offices on a special ballot provided to United States citizens living abroad who last lived in New Hampshire, but currently have no domicile in the United States. State and federal law requires that individuals in this circumstance be allowed to vote for federal offices in this manner.

One elderly individual died between election day and the date when the post card arrived at her residence. Several lived at the addresses claimed, but did not receive their mail at that address. Several had moved after the election, but before the arrival of the post card. The evidence collected indicates that less than half of these individuals were students at the college. The individuals ages ranged from 18 to 69.

No evidence was found of anyone voting more than once or of anyone voting in a jurisdiction where they were not entitled to vote.

Dover Returned Mail – Two False Addresses

In January 2005, concerned citizens in Dover similarly sent letters to approximately 1000 voters who had registered and voted on November 2, 2004. On September 25, 2005, almost eleven months after the election, a complaint was sent to the Attorney General's Office that the United States Post Office had returned twenty of these letters reporting that the individuals had moved from Dover.¹ The statute of limitations for wrongful voting, a misdemeanor, is generally one year. The Attorney General's Office reallocated resources and initiated an expedited investigation of each of these individuals in an effort to complete each investigation before the statute of limitations ran.

¹ On February 7, 2006, for the first time, the complainant from Dover reported that in addition to the twenty returned letters reported to the Attorney General in September of 2005, an additional 95 letters had been returned. The statute of limitations expired on these complaints 3 months before they were presented to this office, therefore no further action will be taken on these complaints first submitted to us 15 months after the election. If people have elections complaints they need to make them in a timely fashion.

No evidence of voting twice was found. Following the same process used in the Keene/Rindge investigation, the election officials from both the New Hampshire and out-of-state communities where these individuals either came from or moved to were contacted and, in each case, they confirmed that the subject individuals did not vote anywhere other than in Dover on November 2, 2004.

The investigation established that 18 of the subject individuals were lawfully domiciled in Dover on November 2, 2004, and had legitimately moved elsewhere between election day and when the mailings were sent to them in 2005.

One individual has been convicted in Dover District Court for providing a false address. While evidence proving residence has not been discovered, the best available information indicates that this individual was actually residing at a different address in the same ward in Dover at the time of the election. A civil penalty is pending against one individual for voting in Dover while residing in Rochester. It has been established that neither voted on November 2, 2004, in any of the other identified communities where each lived before or after living in Dover. Neither of these individuals were students at UNH.

ID Usage by The 52 Voters Investigated in the Keene, Rindge, and Dover Cases

Of these 52 voters, at the time that our investigation was conducted many months after the election, motor vehicle department records indicate that 43 had New Hampshire issued driver's licenses. Of these 43 voters, motor vehicle records indicated that, at the time we pulled the records many months after the election, 25 showed either a current address as the address used when voting or the voter provided a photocopy of a license showing the voting address as the current address. Motor vehicle records showed 18 had other New Hampshire addresses listed as their current address. In some cases, these were the newly acquired address, that is the place the person moved to after they voted. In other cases, these were old addresses, the address the person lived at before moving to Keene, Rindge, or Dover.

Of the 9 that did not have a New Hampshire license, motor vehicle records indicate that 7 had out of state licenses. One had no license, but satisfactorily established her identity through other means. The overseas citizen voter was not expected to have a driver's license issued by any state.

Of the 52 voter records the Attorney General's Office received from the local officials, only 5 included a domicile affidavit. This is an indication that 47 of these voters provided one of the proofs of domicile recognized by New Hampshire law when registering.

Dover – Durham Checklist

At the request of members of the House Election Law Committee who had received anecdotal reports of people voting twice, once in Dover and once in Durham, the Attorney General's Office investigated whether evidence of wrongful voting exists. Twenty seven thousand, one hundred and three (27,103) names in the electronic checklist files for Dover and

Durham were analyzed. Where voters were listed on the checklists with identical first and last names, the paper checklists used on election day were examined. Eighty-nine (89) people with identical first and last names were found listed on the checklist for two towns or wards.

The election day checklists indicate that sixty-seven (67) of these were the same individuals listed twice, but that each voted only in a ward in Dover or only in Durham. These voters are primarily voters who had previously registered in one jurisdiction, moved to a new town or ward, and then on election day registered and voted in that new town or ward. A person's name is removed from the checklist when election officials receive notice that the person has either registered to vote in a different jurisdiction or that the voter has died. RSA 654:36; RSA 654:37. It is therefore common that people who have moved to a new town or ward and who register on election day will also be on the checklist in the town or ward where they previously lived. Under current law voters have no duty to notify election officials when they move out of town. Under current law and procedures, when the election officials from the town or city where the person now lives and where the person registered to vote on election day enter the voter's name into the electronic Statewide Voter Registration System, it will match the entry with the record of that voter from the town or ward where he or she previously lived. The electronic database of voters will automatically notify the election officials of the town or ward where the voter used to live that the voter has moved. When those election officials approve doing so, the voter's name will be removed from the checklist for the town or ward where he or she previously lived.

Based on non-public information, the remaining twenty-two (22) pairs of listings with identical first and last names were found to be different people. These individuals were found to have different middle names, different dates of birth, different towns where they were previously registered, or other information was found which established that there are in fact two different people in these communities with identical first and last names.

No evidence of wrongful voting or voting fraud was discovered during the examination of the Durham and Dover checklists and electronic voter records.

Nashua – Same Address

On November 2, 2004, eighty-eight (88) individuals who were domiciled on property owned by Daniel Webster College registered and voted in Nashua. Following the election, a concerned citizen submitted this list of names to college officials and asked that an official confirm or deny that each was domiciled on college property. A college official confirmed that each was domiciled at the college. The citizen brought this list of names to the Secretary of State and Attorney General's Offices, expressing concern regarding whether the verification of domicile was valid. An investigator from the Attorney General's Office contacted the college official and confirmed that a thorough check had been completed and that the college had verified that each and every one of the eighty-eight individuals was in fact domiciled in college owned property on November 2, 2004.

Other Cases

Independent of these matters the Attorney General's Office has either prosecuted or has knowledge of the prosecution by local authorities of the following cases:

Meredith

A civil penalty of community service was imposed on a person who voted in Meredith while actually domiciled in Manchester. This case involved a victim of domestic violence who voted in a community where she used to live in an effort to prevent her record of voting from disclosing her current domicile. New Hampshire law affords victims of domestic violence the opportunity to vote absentee in a manner that keeps their current domicile town and address non-public.

Londonderry

A 17 year old was convicted of wrongful voting, using a false name, in voting at the January 27, 2004 Presidential Primary, as a result of an investigation and prosecution conducted by the Londonderry Police Department.

Nashua

A man who signed two nominating petitions for a candidate for President prior to the election, forging a family member's name on one petition, was convicted of the criminal offense of making false nominating petitions.

Scope of this Report

This report addresses the significant cases of alleged voting fraud that arose from the November 2, 2004, general election. The Attorney General's Office has also addressed and continues to address a significant number of cases of alleged election law violations related areas of the election laws other than wrongful voting. We also have domicile cases, primarily dealing with individuals who own property in New Hampshire and who have residences elsewhere, where local officials or other voters are challenging whether the voter's domicile is actually in New Hampshire or at their other residence. In the interest of keeping this report brief and focused on the issues before the Legislature, this report does not address these other matters.

Attorney General's Office Election Law Enforcement Efforts

There have been questions raised about the level of resources dedicated to election law enforcement by the Attorney General's Office. Over the past several years the Attorney General has increased the resources allocated to election and ethics law enforcement. These resources were used not only to address voter fraud cases, but also to respond to requests for information or education by citizens and municipal officials, complaints regarding municipal elections, town meetings, charter amendments, and to litigate before the Ballot Law Commission and in State

courts regarding elections and election laws. The increase in available resources reflects the Attorney General's efforts to improve election law compliance using existing appropriations.

Since FY2003 the Attorney General's Office has also provided significant resources in support of the Secretary of State's implementation of the Help America Vote Act ("HAVA"). In FY2005 (July 1, 2004 through June 30, 2005 – the period encompassing the November 2, 2004 general election), the Attorney General's Office, using essentially the same number of personnel funded since 2000 increased the resources used for election law related work significantly when compared to the efforts in FY 2001 (the period encompassing the 2000 general election) and FY2003 (the period encompassing the 2002 general election). The Attorney General's Office has significantly enhanced its timekeeping systems since 2000, with the current timekeeping system being implemented in early 2005. Therefore, it is difficult to create an exact comparison of the human resource hours dedicated to election law enforcement generally or voting fraud cases specifically over this period of time. However, the Attorney General's Office election law enforcement efforts for the 2004 general election were more than double the efforts documented for either the 2000 or 2002 elections.

Since the inception of the Help America Vote Act implementation in New Hampshire, basic training and education on detecting and deterring voting fraud has been incorporated into HAVA funded training on HAVA mandated election law changes. A significant part of the Attorney General's role in implementing HAVA relates to the creation and implementation of the Statewide Voter Registration System and the Accessible Voting System. It is expected that the Attorney General's Office ongoing work related to HAVA will decrease significantly after the systems are fully operational. The HAVA budget plan calls for a significant reduction in the HAVA funds made available to the Attorney General's Office starting in FY 2008. In order to maintain and enhance our efforts to enforce the State's election laws, the Attorney General believes it is important for the legislature to consider increasing the office's resources for election law enforcement to maintain the public's trust in the election process.

New Hampshire has a long and proud tradition of conducting well-run and clean elections. The results of our investigation reflect that there are very few instances of wrongful voting in New Hampshire, the overwhelming majority of which involve people who had a right to vote somewhere in New Hampshire. New Hampshire's local election officials are the front line of our defense against voting fraud and our investigations support the conclusion that most local officials do an excellent job.